

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No.6786 of 1997
with
Special Civil Application No.2368 of 1998

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHREE UPLETA TALUKA CO OP. PURCHASE AND SALES UNION LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6786 of 1997
MR HARIN P RAVAL for Petitioner
MR DA BAMBHANIA for Respondent No. 1
Ms. Amee Yajnik, Assistant GOVERNMENT PLEADER
for Respondent No. 3

2. Special Civil Application No 2379 of 1988
MR Jayant Patel, Advocate, for Petitioner
Ms. Amee Yajnik, Assistant GOVERNMENT PLEADER,
for Respondent No. 1
NOTICE SERVED for Respondent No. 3

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

Date of decision: 24/04/98

ORAL JUDGEMENT: (Per K. Sreedharan, C.J.)

1. These two petitions relate to the affairs of Shree Upleta Taluka Cooperative Purchase & Sale Union Limited (hereinafter referred to as "The Society") a Cooperative Society, controlled by the provisions of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "The Act"). So, we consider it advantageous to dispose of these petitions by a common judgment.

2. Short facts necessary for the disposal of these petitions are as follows :-

Election to the Managing Committee of Petitioner-Society was held on 21.1.1994. As per the provisions of the Act, that Managing Committee was to be in office for a term of three years from the date of the first meeting of that Committee. First meeting was held on 16.3.1994. So, its term was to expire on 15.3.1997. Till the beginning of March, 1997, the Managing Committee did not take any action to hold the election. On 1.3.1997, District Registrar, Rajkot directed the society to initiate steps for election to the new Managing Committee. Thereupon, the Managing Committee passed a Resolution No.9 on 25.3.1997 for holding the election to the Managing Committee. A proposal passed on that Resolution was forwarded to the District Registrar on 1st April, 1997. District Registrar, by communication dated 28.4.1997, sought for further details from the Society. The query was whether the election of delegates was held properly. By communication dated 1.5.1997, the Society informed the Registrar that no Member Society is in default making it ineligible to be a voter. District Registrar forwarded proposal for holding election to the Deputy Collector on 3.6.1997. Deputy Collector wanted authenticated Voters' List from the District Registrar. On 23.6.1997, five Member Societies were ordered to be liquidated, invoking the powers under Section 107 of the Act. Registrar appointed interim Liquidators for those five Societies. District Registrar informed the Deputy Collector that five Member Societies have been ordered to be wound up and other three Societies are not functional. He, therefore, requested the Deputy Collector to delete the names of eight Societies from the Voters' List. Consequently, those 8 Societies were removed from the Voters' List. The factum of their removal was intimated to those Member Societies by communication dated 5.7.1997. On that day, provisional Voters' List for election to the Managing Committee of the Society was

published.

3. Three Societies, which were ordered to be liquidated, challenged the order of liquidation before this Court by filing Special Civil Applications Nos. 5420 of 1997, 5423 of 1997 and 5424 of 1997. This Court, by judgment dated 6.4.1998, quashed the orders of liquidation passed against the three Societies. Consequently, those three Societies are not having any disqualification on account of being on liquidation.

4. Petitioners in Special Civil Applications Nos. 5420 of 1997, 5423 of 1997 and 5424 of 1997, along with two other Societies, whose names were removed from the Voters' List filed Special Civil Application No.5425 of 1997, challenging the removal of their names from the Voters' List. This Court granted interim relief, in as much as, it directed maintenance of status quo. That Special Civil Application is still pending. Depending on the decision in that application, finalisation of the Voters' List has to be made.

5. By Annexure 'O' Order, the Deputy Collector finalised the Voters' List by removing the names of eight Member Societies.

6. District Registrar, Rajkot appointed Custodian to the Society, by his order dated 10th / 11th September, 1997, invoking his powers under Section 74D of the Act. Immediately thereupon, Custodian took charge of the affairs of the Society. Order appointing the Custodian is under challenge in Special Civil Application No.6786 of 1997. That application was filed before Court on 15.9.1997 and was moved on 16.9.1997. This Court passed interim order of stay. Since that interim order of stay was not effective, in as much as the, Custodian had taken charge earlier, petitioners moved Civil Application No.9229 of 1997 for getting charge of the affairs of the Society. No order has been passed on that Civil Application till date. Thus, right from the date of the impugned order, Custodian is in charge of the affairs of the Society.

7. On 20.3.1998, Joint Registrar, Commerce, sent a communication to the District Registrar to take appropriate action in view of the interim order of stay passed by this Court in Special Civil Application No.6786 of 1997. It was stated therein that action must be taken for handing over the administration of the Society to the Elected Body. In compliance with that direction, District Registrar issued order dated 21.3.1998 and

cancelled the order dated 10/11.9.1997, whereby Custodian was appointed. As a result of that, District Registrar wanted the outgoing Managing Committee to resume charge of the Society. That order is under challenge at the instance of two Member-Societies in Special Civil Application No.2368 of 1998. When this petition came up for admission, we directed stay of operation of orders passed by the Joint Registrar and District Registrar on 20.3.1998 and 21.3.1998, respectively. We further ordered that the Elected Body, whose term expired long back, should not be reinstated in office. As a result of that order passed by us, District Registrar cancelled his order dated 21.3.1998. Thus, the Custodian, who took charge of the affairs of the Society, pursuant to the order dated 10/11.9.1997, is continuing in office.

8. The term of office of the Elected Members of the Managing Committee of the Petitioner-Society expired way back on 15.3.1997. At this distance of time, the only course that is open to this Court is to direct the District Registrar and the Deputy collector to hold the election of Members to the New Managing Committee, as expeditiously as possible. For that purpose, Voters' List can be finalized in terms of the judgment in Special Civil Application No.5425 of 1997. Parties are directed to represent before the Court, in which the case is posted, to have early disposal of that petition.

9. Petitioner in Special Civil Application No.6786 of 1997 is having complaints against the person of the Custodian now functioning. We do not think it necessary that we should go into that issue in these proceedings. We direct the District Registrar to examine that issue and to pass appropriate orders in accordance with law, taking into consideration the best interest of the Society. This, we are sure, will be done by the District Registrar within two weeks from today.

10. In the circumstances detailed above, we dispose of Special Civil Application No.6768 of 1997 by directing the District Registrar and Deputy Collector to hold the election to the Managing Committee of the Petitioner-Society in accordance with law as expeditiously as possible in the light of the decision in Special Civil Application No.5425 of 1997. Special Civil Application No.2368 of 1998 is allowed in the sense that Annexures 'A' and 'B' orders are quashed. Parties are directed to suffer their respective costs in these petitions.

(apj)